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In re Application of :
NAKAMURA et al. :
Application No.: 10/528,069 :
PCT No.: PCT/JP03/12353 :
Int. Filing Date: 26 September 2003 : DECISION
Priority Date: 27 September 2002 :
Attorney Docket No.: 122733 :
For: THERMAL TREATMENT APPARATUS, :
METHOD FOR MANUFACTURING :
SEMICONDUCTOR DEVICE, AND METHOD :
FOR MANUFACTURING SUBSTRATE :

This decision is in response to the submission filed 10 July 2006 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 26 September 2003, applicants filed international application PCT/JP03/12353, which designated the United States and claimed a priority date of 27 September 2002. A copy of the international application was communicated from the International Bureau to the USPTO on 08 April 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 28 March 2005 (27 March 2005 being a Sunday).

On 15 March 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and a translation of the application into English.

On 26 August 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date were required.

On 07 October 2005, applicants filed a petition under 37 CFR 1.47(a) which was accompanied by, *inter alia*, a declaration of inventors, a declaration of facts by Mr. Akihiro Fukushima, a copy of a letter sent to non-signing inventor Mr. Shimada on April 6, 2005 and an

English translation thereof, a copy of a letter sent to Mr. Shimada on May 23, 2005 and an English translation thereof, and copies of two certified mail receipts and English translations thereof.

On 03 March 2006, a decision was mailed dismissing applicants' petition under 37 CFR 1.47(a). However, that decision failed to take into account the declaration of facts by Mr. Akihiro Fukushima.

On 13 March 2006, a supplemental decision was mailed vacating the decision mailed 03 March 2006 and taking into account the declaration of facts by Mr. Akihiro Fukushima. The decision dismissed applicants' petition under 37 CFR 1.47(a) without prejudice because applicant had failed to provide factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort. The decision also indicated that a translation of the Figures was required.

On 10 July 2006, applicants filed the instant submission which was accompanied by, *inter alia*, a declaration of inventors and a translation of the Figures.

DISCUSSION

Since a 37 CFR 1.497 declaration has been executed by all the joint inventors, the petition for status under 37 CFR 1.47(a) is moot. The application need not be returned to the Office of PCT Legal Affairs for any further consideration of the status under 37 CFR 1.47 and no such status should be indicated on this application file.

The declaration of inventors filed 10 July 2006 is not in compliance with 37 CFR 1.69(b), specifically applicants have not used one of the pre-approved foreign language forms nor have applicants furnished the requisite statement attesting to the accuracy of the translation.

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED** as **MOOT**.

Since the reply filed 10 July 2006 appears to have been bona fide, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to provide (1) a pre-approved foreign language declaration in compliance with 37 CFR 1.497(a)-(b) or (2) the requisite statement under 37 CFR 1.69(b) that the translation is accurate. Failure to timely file a proper reply will result in abandonment of the application.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria,

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Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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